

DOCUMENT RESUME

ED 348 751

EA 024 217

TITLE Negotiating Change: Education Reform and Collective Bargaining. Studies in Collective Bargaining.
INSTITUTION National Education Association, Washington, D.C. Research Div.
PUB DATE 92
NOTE 47p.; Some colored ink may not reproduce well in paper copy.
AVAILABLE FROM NEA Professional Library, P.O. Box 509, West Haven, CT 06516.
PUB TYPE Reports - Evaluative/Feasibility (142)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Collective Bargaining; Educational Change; *Educational Policy; Elementary Secondary Education; *Legal Problems; *Negotiation Impasses; Public Education; School Restructuring; *Teaching Conditions; *Unions; Work Environment

ABSTRACT

Most recent reform initiatives have begun outside the collective-bargaining process and are unregulated by collective-bargaining agreements. The collective-bargaining process should be used creatively to shape the changes that are now occurring. When public school teachers were granted bargaining rights, the scope of negotiation was limited more strictly than for private sector bargaining. In several states, bargaining scope is defined by enumerated subjects, rather than through wages, hours, and other terms and conditions of employment. Statutes containing comprehensive management rights provisions or restrictive lists of negotiable subjects present unions with formidable barriers to negotiations. State courts and public employee relations boards have often had to develop legal tests or standards to determine whether certain items pertain to educational policy or working conditions. Also, considerable variation in bargaining exists from state to state. Collective bargaining over educational policy issues is rare; since 1975, teachers have made little progress in obtaining new contractual provisions concerning noncompensation items. As the education reform movement becomes more concerned with school restructuring, local associations must forge an appropriate relationship between the collective-bargaining process and the educational change process. Local associations contemplating serious involvement in school improvement efforts should negotiate contractual provisions governing these efforts. Included are an executive summary and a bibliography of 48 references. (MLH)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

Negotiating Change: Education Reform and Collective Bargaining

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

☒ This document has been reproduced as
received from the person or organization
originating it.
☐ Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official
OERI position or policy.

"PERMISSION TO REPRODUCE THIS
MATERIAL HAS BEEN GRANTED BY

L. Hill

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)"

National
Education
Association

RESEARCH DIVISION

BEST COPY AVAILABLE

EA 024217



NATIONAL
EDUCATION
ASSOCIATION

Limited supplies of complimentary copies of this publication are available from NEA Research for state and local associations and UniServ staff. Additional copies may be purchased from the NEA Professional Library, P.O. Box 509, West Haven, CT 06516. Telephone 1-800-229-4200 for price information.

Reproduction: No part of this report may be reproduced in any form without written permission from NEA-affiliated associations. Any reproduction of the report materials must include the usual credit line. Address communications to Editor, NEA Research.

Copyright © 1992 by the
National Education Association
All Rights Reserved

Questions concerning material discussed in this publication should be directed to John Yrchik, NEA Research, (202) 822-7465.

National Education Association
1201 Sixteenth Street, N.W.
Washington, DC 20036-3290

STUDIES IN COLLECTIVE BARGAINING

National
Education
Association

RESEARCH DIVISION

Contents

5

Preface

7

Executive Summary

10

NEA Seeks a Broad Scope of
Bargaining

12

Administrators Retreat from
Broad Scope

14

The Scope of Public Sector
Bargaining

State Statutes

The Courts and the Scope of
Bargaining

The Overlap of Policy and
Working Conditions

Drawing the Line
Overview

22

Bargaining Educational Policy

An Unfinished Agenda

Noncompensation Items in
Contracts

Impasse Procedures

25

Integrating School
Restructuring and Collective
Bargaining

The Labor Perspective

The Professional Perspective

30 The Importance of Negotiating
Change

34 Considerations in Negotiating
Change

The Existing Agreement
A Good Relationship
Member Support
The Funding Dilemma
The Scope of Bargaining

38 Examples of Bargaining for
Change

Jefferson County, Kentucky
Greece, New York

42 Bibliography

Preface

Change has been the watchword of education for much of the last decade. Attention has been focused on school management and organization, student grouping and assessment, the curriculum, parental choice, and accountability, to name some of the more popular subjects. The myriad reform initiatives of the last several years bear little relationship to one another. But most of them do have one thing in common. The vast majority of education reform initiatives were begun outside the collective bargaining process and are unregulated by collective bargaining agreements.

The 1990 NEA census of local associations involved in site-based decision-making projects brought some disturbing news with respect to the negotiation of formal agreements governing site-based decisionmaking. One-half of all site-based decisionmaking projects reported in the census are not regulated by an agreement of any kind. One-fourth are only regulated by an informal agreement between the association and the district. Only one-fourth of all projects are regulated by either a letter of agreement or a collective bargaining agreement (NEA 1991).

It seems very clear that if school boards and administrations are successful both in creating participative organizational cultures and generating new opportunities for education employees to contribute to education outside of the collective bargaining process and without the support of the local association, over time collective bargaining will become marginalized. Collective bargaining will still exist. However, bargaining will be confined to wages, hours, and working conditions (narrowly defined), while the most dynamic and potentially important aspects of public education will be excluded from it. The alternative to this scenario is to use the collective bargaining process creatively to shape the changes that are now occurring.

Negotiating change is also important because of the societal pressures being

placed upon public education. Demands for a more highly educated work force coupled with the problems caused by growing poverty and the breakdown of families and communities have created acute stress in public schools. All this is happening at a time when education funding is decreasing in many states and communities rather than increasing. In spite of the obstacles, however, it is critical that we continue to promote change in public schools at this time. If new funds cannot be secured for new programs, we must find creative ways to redeploy existing funds to meet the demands being made upon schools. If we fail in this regard, we will come out of the recession with our schools largely incapable of responding to the needs of the society.

What kinds of organizational and institutional changes are possible in a bleak economic time? What kinds of contract language would move us closer to where we want to be? As difficult as these questions are to deal with, they must be asked. Perhaps the only viable response to the multiple challenges facing public education is to ensure that the public schools are as good as they can be. We cannot do this unless we think seriously about change. And when we think about change, we must also consider the role of negotiations in creating a sound framework within which change can take place.

The NEA's interest in negotiating about professional issues dates from the very early years of bargaining. Our members' desire to negotiate about the conditions of their professional practice helped fuel the expansion of collective bargaining. Much of that early fervor about using negotiations as a vehicle for enhancing the professional status of teaching has died down. The causes for this are complex and vary considerably across states and districts. Statutory restrictions on bargaining about matters of educational policy, judicial and board decisions about the scope of bargaining, and school board and adminis-

trator opposition to dealing with policy issues in the bargaining process are some of the factors contributing to the production of a more restrictive list of bargaining subjects than was envisioned by early proponents of bargaining in the NEA. This was unfortunate, but tolerable so long as the basic structure of education remained intact. Now, however, as the familiar contours of education become reshaped through legislative enactments and shifts in public policy, local associations' inability or unwillingness to use the negotiating table to discuss and agree on the terms of change is a much more serious problem.

This publication seeks to raise awareness and stimulate discussion about this critical issue of negotiating change in order to encourage education associations to become developers and shapers of educational policies and programs. We need to take a step back from the day-to-day demands of collective bargaining and look more broadly at where we have come from, where we are, and where we ought to be going. Many of the issues discussed in the context of reform probably do not appear as pressing as next year's salary increases appear to association leaders and members. The point, however, is that over the long term they may prove even more important than some of today's hottest issues.

The topics addressed in this publication include the historical record regarding negotiating on policy questions, the legal framework for bargaining about issues that touch on educational policy, and the relationship between collective bargaining and educational change. Our focus is on bargaining in the K-12 context. Readers interested in bargaining in the higher education and educational support personnel contexts will no doubt recognize some of the dilemmas described in this paper as their own. At the same time, adequate bargaining analyses for these groups require attention to their different bargaining contexts and issues.

There are many different histories of bargaining in our organization. Each state and district has had its own unique experiences with teacher bargaining and, quite possibly, its own interpretation of why bargaining took the course that it did over the years. Consequently, it is possible that individual states and districts will find reason to disagree with some of the specific claims made in this publication about the direction and problems confronting teacher bargaining. We encourage such disagreements and, in fact, any discussion about the issues contained in this publication. It is our intention that this publication spark debate about the issues presented here. Its purpose is not to serve as the last word, but to begin the thinking about the next step for bargaining to take.

NEA Research gratefully acknowledges the help of Robert Chanin, NEA General Counsel, and John Dunlop, director of NEA Collective Bargaining and Compensation, in the preparation of this publication.

Executive Summary

Most reform initiatives of the past several years have begun outside the collective bargaining process and are unregulated by collective bargaining agreements.

If this trend continues, it could mean that collective bargaining will have only a tenuous and possibly conflictual relationship to some of the most dynamic and potentially important aspects of public education.

The alternative to this scenario is to use the collective bargaining process creatively to shape the changes that are now occurring.

- In the early years of collective bargaining in education, the NEA and its affiliates sought to bargain about a host of professional issues.

The NEA's interest in the area of professional issues reflected the belief that negotiations would further professionalize teaching by encouraging the participation of teachers in making decisions affecting their practice.

- The passage of state bargaining statutes for various categories of public employees, which was supported by the NEA and other public employee unions, was a critical factor in the development and spread of collective bargaining in the public sector.

Currently, 34 states and the District of Columbia have passed collective bargaining statutes that cover bargaining by public school teachers.

- At the same time that they were granted the right to bargain, the area within which bargaining was mandated was defined by a clause in each statute that defined the scope of negotiation.

Some variation of the phrase "wages, hours, and other terms and conditions of employment" was adopted in the scope clauses of 27 states. Despite their superficial similarity, however,

minor differences in language of the statute may imply major differences in the scope of bargaining.

- In the public sector, statutes contain barriers to effective bargaining that do not exist in the private sector.

While most states distinguish between mandatory and permissive subjects of bargaining and permit the parties to bargain about permissive subjects (as does the private sector), five states have eliminated the permissive category entirely.

Unlike the National Labor Relations Act, many statutes contain a "management rights" clause that limits the scope of bargaining.

In several states, the scope of bargaining is defined by enumerated subjects rather than through "wages, hours, and other terms and conditions of employment."

Statutes which contain comprehensive management rights provisions or restrictive lists of negotiable subjects present associations with formidable barriers to negotiations about subjects of concern to their members.

State courts and public employee relations boards have often been faced with the task of developing legal tests or standards to determine whether the items in question fall into the area of educational policy or working conditions.

The tests and standards developed in this respect have had differential effects on the scope of bargaining. Some have broadened the area of negotiability, while others have circumscribed it.

For the most part, the scope of bargaining has been narrowed when courts have invoked either the doctrine of management rights or public policy to exclude subjects from the bargaining process.

The public policy exception suggests that collective bargaining has the potential to damage the integrity of the political process or jeopardize the interests of the citizenry.

Considerable variation in bargaining exists from state to state. Legal scholar David Rabban notes that only the narrowest working conditions (e.g., salary and supplementary employment) are clearly mandatory. Holdings on other subjects vary considerably from state to state.

The scope of bargaining in many states makes it difficult for many local associations to bargain about critical matters of educational policy.

Fortunately, however, the scope of bargaining is not the only determinant of what is bargained. The efforts of local associations and the local climate for bargaining are also critical.

Local associations in states without any bargaining statutes and only minimal sanctions for their activities (such as the Jefferson County [Ky.] Education Association) have made great strides in negotiating change.

The evidence available on bargaining about issues of educational policy indicates that collective bargaining over questions of educational policy is more the exception than the rule.

The most recent study of bargaining over noncompensation items indicates that the teacher unions made little progress in obtaining new contractual provisions after 1975.

As the education reform movement becomes more concerned with school restructuring efforts, it becomes increasingly important for local associations to forge an appropriate relationship between the process of collective bargaining and the process of educational change.

Unless a healthy relationship can be developed between these two processes, there is the potential for overlap and conflict between them. This could be divisive for the local association and detrimental to the bargaining process.

To some degree, the creation of a healthy relationship between bargaining and reform implies that local associations seriously consider school restructuring and determine how specific types of change might be negotiated.

From both the standpoint of labor relations and the status of the teaching profession, school restructuring offers rich possibilities that the present organization of education does not offer.

From a labor relations perspective, the quality of working life and the health of an industry are bound up with one another. For about the past 15 years, unions and managements in the private sector have set in place a host of measures from joint labor-management committees to autonomous work teams that are designed to involve workers and their unions more fully in the day-to-day operations of their firms.

From a professional perspective, too, the greater measure of autonomy held out by school restructuring is vastly preferable to a hierarchical system that governs by directive and not by discussion and consensus.

To seek the benefits that school restructuring offers to both members and the association and to avoid the pitfalls, local associations contemplating serious involvement in school improvement efforts are strongly urged to negotiate contractual provisions governing these efforts.

The contract defines the scope of the effort.

The contract can compel districts to commit resources to the effort.

The contract institutionalizes district policy on an effort.

The contract ensures the role of the local association in the change process.

When change is negotiated, the local association communicates to its members its role is securing the program for them.

Some situations are more congenial than others with respect to the negotiation of change.

Factors that lead to success include a sound existing agreement, a good relationship with the district, strong member support for change, a broad scope of bargaining, and adequate funding.

It is not necessary for all of these factors to be present. Change has been successfully initiated in areas without all of these conditions being present. Nevertheless, these are the considerations that help local associations to introduce change successfully.

In spite of the obstacles, bargaining for change is possible. In recent years a number of NEA affiliates have initiated change efforts through the collective bargaining process or sought to regulate existing efforts. The examples given here are Jefferson County, Kentucky (a state without a bargaining statute), and Greece, New York.

We need to educate our members and the general public about the capacity of collective bargaining to provide for the professional needs as well as the rights and protections of education employees.

Educational change is necessary; and collective bargaining provides a solid, credible platform from which to initiate and regulate the process.

NEA Seeks a Broad Scope of Bargaining

A broad scope of bargaining was precisely what was sought by the NEA and its affiliates in the early years of bargaining. According to the NEA's *Guidelines for Professional Negotiation*, the subjects of professional negotiations included but were not limited to "setting standards in employing professional personnel, community support for the school system, inservice training of personnel, class size, teacher turnover, personnel policies, salaries, working conditions, and communication within the school systems" (NEA 1963). Resolution No. 17 adopted by the NEA Representative Assembly in 1968 encouraged local affiliates to see that teachers are guaranteed "a voice in the establishment of instructional policies."

In 1971 an NEA publication entitled *Negotiation for the Improvement of the Profession* made a strong case for teacher involvement in instructional decision-making.

Teacher organizations have a professional responsibility to promote better instruction. . . . Since no profession can function effectively when its members are denied the right to make better decisions regarding their work, this trend promises to raise teaching to a higher professional status.

The publication went on to say that even though the teacher involvement in curricular decisionmaking is a basic tenet of every respectable textbook about curriculum, teachers often find themselves forced to fight for this right in contract negotiations. One recommendation made by NEA was the establishment of an Educational Development Council (also known as a joint committee or instructional policy council), a districtwide committee of teachers and administrators to meet periodically to develop "a plan of action for educational change." Detailed guidelines covered such issues as the number of council members, composition of

the council, terms of council members, provisions for release time, funding for council operations, the appropriate level of authority, the relationship of council operations to the contract, meetings per year, provision for subcommittees, the preparation of agendas, communication with members, and the provision of adequate clerical assistance for council activities (NEA 1971).

For NEA's affiliates, too, negotiations were seen as a vehicle to advance professional interests. The New York State Teachers Association (now NEA-NY), distributed its *Rationale for Negotiating an Instructional Policies Council* later in the same year. According to the NYSTA,

Instructional Policy Councils (IPC's) are a means of giving teachers a "handle" in instructional decision-making. The concept of policy councils is not new. . . . What is new is the fact that negotiation of the structure gives the council the needed strength for enforcement, study, research, development, implementation, follow-up and evaluation. (1971)

Negotiations were viewed as playing a significant role in the IPCs because negotiations engendered a clear commitment from the school board/administration and the teachers' association to the concept. Moreover, negotiations emphasized teachers' right to participate in educational decisionmaking. In essence negotiations were seen as another forum in which teachers could participate with some semblance of the "rough parity of power" that defined the collective negotiations process itself. In other words, local associations were advised to use the legal rights granted to teachers in bargaining to secure rights in other non-bargaining forums.

In large measure the NEA's interest in a broad scope of negotiations reflected the belief that negotiations would further professionalize teaching by encouraging the participation of teachers in making decisions affecting their practice. In his tea-

timony before the Advisory Commission on Intergovernmental Relations, NEA Executive Director, Sam Lambert, stated the organization's position in this regard:

It is our position that private sector definitions are unduly restrictive when applied to teacher-school board negotiation. We believe that a teacher, having committed himself to a career of socially valuable service and having invested years in preparation (and perhaps years of postgraduate study after original hire), has a special identification with the standards of his "practice" and the quality of service provided to his "clientele." As a result of this identification, teachers characteristically seek to participate in decision-making in respect to teaching methods, curriculum content, educational facilities, and other matters designed to change the nature or improve the quality of the educational service being given to children, and they see negotiation as the vehicle for such participation. Accordingly, we propose that a broad and somewhat open-ended definition of scope of negotiation be adopted—to wit that a school board be obligated to negotiate in regard to "the terms and conditions of professional service and other matters of mutual concern." (Lambert 1969)

This view appears to have had currency within the state affiliates as well. In a 1969 essay "Negotiating for Instruction in Michigan," the Michigan Education Association's Assistant Executive Secretary for Instruction, Karl Ohlendorf, pointed to collective negotiation as a "new route which may lead to the professionalization of teachers." Unlike the old concept of bargaining power, which emphasized the amount and quality of a teacher's preservice education, collective negotiation underscored professional growth and the participation of teachers as a group in systemwide decisions on the content and organization of instruction. These bargaining goals were in consonance with member expectations that the state association pro-

vide leadership in the instructional area. Members were not alone in their expectations. In the late 1960s, Michigan school boards, parents, and taxpayers were insistent that the MEA take a serious look at school organization. To this end, the MEA examined proposals for restructuring the school year, team teaching, nongrading, differentiation of the staff, the use of paraprofessionals, and other educational programs (Ohlendorf 1969).

Administrators Retreat from Broad Scope

The notion that local associations have a legitimate right and interest in using negotiations to deal with educational policy concerns gained initial support from the American Association of School Administrators. In "School Administrators View Professional Negotiations," a 1966 position paper, the AASA noted:

The AASA finds the reasoning for a rather broadly construed concept of negotiation most persuasive. There is a substantial difference between bargaining over wages and hours in the industrial context and negotiating over matters of common interest in the educational context. If education is clearly a profession, all professional personnel have a legitimate interest in the decisions that affect their pupil clientele, the effectiveness of their own work, and the quality of the educational program. (Reproduced in Wollett and Chanin 1970)

The paper goes on to say that while negotiating specific curricular items would be nonsensical, the process by which educational decisions are made could be made the subject of negotiation — a position identical to the later NEA position on education development councils. The list of items deemed appropriate for negotiations includes curriculum, inservice education, provision of physical facilities for teachers, personnel policies, and class size, among more standard fare (Wollett and Chanin 1970).

Only two years later, however, in "The School Administrator and Negotiation," the AASA changed its position to distinguish between *negotiation* and *advisory consultation*. Not surprisingly, salaries, benefits, and leaves were deemed negotiable, and issues like teacher involvement in the curriculum, pupil discipline, assignment, and career development activities were deemed appropriate items for advisory consultation (Wollett and Chanin 1970). Teachers and administrators failed to agree on what was negotiable rather early on in the process. As would later prove to be the case with numerous court and board rulings, the most hotly contested issues invariably turned on educational policy.



The Scope of Public Sector Bargaining

The legal status of policy and professional issues in the negotiations process is a critical factor in an individual association's ability to use bargaining as an effective instrument in the change process. We are primarily concerned here with examining the scope of bargaining provisions in both state bargaining statutes and case law concerned with the scope of bargaining.

State Statutes

The passage of state bargaining statutes for various categories of public employees, which was supported and encouraged by the NEA and other public employee unions, was a critical factor in the development and spread of collective bargaining in the public sector. Between 1959, when Wisconsin passed the first state bargaining statute, and 1970, 23 states passed statutes allowing public education employees to bargain. Currently 34 states and the District of Columbia have collective bargaining statutes that cover bargaining by public school teachers.

Each bargaining statute has a clause defining the scope of negotiation. In this respect, state legislatures have been guided by the National Labor Relations Act (*Harvard Law Review* 1984, Clark 1976, Alleyne 1976). Some variation of the phrase "wages, hours, and other terms and conditions of employment" has been adopted in the scope clauses of 27 states (Davis 1989).

Slight variations in the statutory language, however, can imply a narrower or a broader scope of bargaining. Proposals falling within this statutory language are mandatory subjects of bargaining. Both parties are obligated to negotiate in good faith with respect to mandatory subjects and may insist upon their positions to the point of impasse. (Davis 1989)

In most states, proposals that do not fall within the category of mandatory subjects are considered permissive subjects. Permissive subjects may be negotiated if both the employer and employee bargaining representatives mutually agree to discuss them. However, they cannot be insisted upon to the point of impasse. California and Hawaii have eliminated the permissive category by statute, while Delaware, New Jersey, and Maryland have managed this by judicial decision (Befort 1985). In these states, there are only mandatory and nonnegotiable subjects of bargaining. No permissive category exists.

Unlike the NLRA, many statutes contain a "management rights clause" that limits the scope of bargaining. The concept of a clause delineating management rights descends in part from a concurring opinion written by Supreme Court Justice Stewart. In its decision in *Fibreboard Paper Products Corporation v. the National Labor Relations Board*, 85 S. Ct. 398 (1964), the Court ordered the company to reinstitute the maintenance operation previously performed by unionized employees (which the company had shut down and subcontracted out), to reinstate the employees to their former or equivalent positions with back pay, and to fulfill its statutory obligation to bargain. In agreeing with the majority opinion, Justice Stewart wrote:

It is important to note that the words of the statute are words of limitation. The National Labor Relations Act does not say that the employer and employees are bound to confer upon any subject which interests either of them; the specification of wages, hours, and other terms and conditions of employment defines a limited category of issues subject to compulsory bargaining. . . . Nothing the Court holds today should be understood as imposing a duty to bargain collectively regarding such managerial decisions, which lie at the core of entrepreneurial control . . . those management decisions which are fundamental to

the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from that area.

The doctrine of management rights implies that bargaining obligations have the potential to hamper the employer to run the enterprise in the "most efficient manner." Despite the fact that public agencies do not seek the course of greatest profit, legislatures adopting management rights clauses have signaled that public employers have a "vested" interest in the unhampered operation of public agencies that is analogous to the private employer's property rights (*Harvard Law Review* 1984). Presently 19 states have a clause that details the rights reserved to management. These areas, which usually include matters of educational policy, are not negotiable.

Another way states (e.g., California, Iowa, Kansas, and Nevada) have chosen to define the scope of bargaining is through listing mandatory bargaining subjects. In part, the purpose of legislatures in listing the subjects of bargaining was to avoid the problems that typically arise over the proper interpretation of scope of bargaining provisions. Depending upon the statutory language, the specific subjects listed in the statute may define the parameters of bargaining or serve as examples of the kinds of subjects that would fall within the mandatory category (Davis 1989). In the former case the scope of bargaining is limited by the subjects listed. In the latter case it is not. Beyond the wording of the statute, the interpretation placed on it by state courts has proven critical in determining whether the list of subjects should be read in a restrictive or representative fashion (Davis 1989). In *San Mateo City School District v. Public Employment Relations Board*, 643 P.2d 523 (1983), the Supreme Court of California held that the subjects not enumerated in the Educational Employment Relations Act may be negotiable under certain conditions. On the

other hand, in *City of Fort Dodge v. Iowa Public Employment Relations Board* (275 N.W.2d 393), the Supreme Court of Iowa held that the legislature intended the list of negotiable items to be restrictive.

State bargaining statutes containing comprehensive management rights provisions and restrictive lists of negotiable subjects present associations with formidable barriers to negotiating about subjects of concern to their members' working lives. As one author summed it up:

Such laws, which encourage or require public employers to avoid problems rather than to deal with them, are mischievous because they produce strife and frustration rather than understanding and peaceful accommodation of conflicts between government and its employees. (Wollett 1971)

The Courts and the Scope of Bargaining

The struggle over the negotiability of individual items played itself out at the negotiating table and in cases brought before public employee relations boards and state courts. Courts were often put in the position of final arbiters on questions of negotiability. When they issued opinions on the negotiability of individual items, their rulings applied not only to the individual district involved in the dispute, but all other districts in the state. In effect they removed some measure of discretion from both associations and school districts in working out appropriate areas of negotiation between themselves. The fact that many scope of bargaining issues were subject to judicial determination at all is a fact of some interest. The attitude that school board negotiators brought to the bargaining table may have played a key role in this respect:

If the negotiator conceives his function to be one of establishing immutable principles, winning points and outscoring the adversary, massaging his client's ego, or building a reputation as a protagonist of ordered government and managerial sovereignty, the issue of what is bargainable is fertile ground. If, on the other hand, he approaches the table in a spirit of meeting problems rather than avoiding them, and of trying to find ways to reach agreement rather than identifying obstacles which make a negotiated settlement impossible, I submit that the question of scope of bargaining becomes of little significance. (Wollett 1971)

Nevertheless, many boards refused to negotiate about specific issues and many cases found their way into state courts as a consequence. In an important sense, the specific interpretations given to individual statutes by labor boards and courts have proven to be as important in defining the scope of bargaining as the specific language contained in the statutes. The judicial record on the scope of bargaining in the public sector presents in stark terms the nature of the difficulties local associations have faced and continue to face in trying to bargain about policy and professional issues.

The Overlap of Policy and Working Conditions

In the first place no existing statute mandates bargaining about educational policy. Following the private sector, state bargaining statutes mandate bargaining about working conditions and (in some cases) the impact of educational policies on working conditions. The only reason associations have been able to bargain about educational policy in many instances is because subjects of bargaining are rarely only about policy or working conditions. Often they relate to both areas simultaneously. This overlap of educational policy and working

conditions gives legitimacy to local associations' claims about the negotiability of individual items.

This difficulty in distinguishing between working conditions and educational policy was duly noted by a number of courts faced with the prospect of defining employers' duty to bargain. In *West Hartford Education Association v. DeCourcy*, 80 LRRM 2422 (1969), the Connecticut Supreme Court opinion stated:

To decide whether the . . . items in question . . . are mandatory subjects of negotiation, we must direct our attention to the phrase "conditions of employment." The problem would be simplified greatly if the phrase "conditions of employment" and its purported antithesis, educational policy, denoted two definite and distinct areas. Unfortunately, this is not the case. Many educational policy decisions make an impact on a teacher's conditions of employment and the converse is equally true. There is no unwavering line separating the two categories.

In *City of Biddeford v. Biddeford Teachers Association et al.*, 304 A.2d 387 (1973), heard by the Supreme Judicial Court of Maine, Justice Wernick's opinion makes a similar point:

"Educational policies" and "working conditions" may be reasonably conceived as categories defining areas with essential purity at the extremities but with intermediate zones of substantial admixture. . . . even if some of the concrete items in dispute may be readily classifiable at the extremes of "policies" or "working conditions," it is undeniable that by far the major portion lie in the intermediate area with substantial intermixings.

Such concerns are also seen in *Westwood Community Schools v. Westwood Education Association*, MERC Lab. Op. 313 (1972), *Dunellen Board of Education v. Dunellen Education Association*, N.J. 311 A. 2d 737 (1973), and *City of Beloit v. Wisconsin Employment Relations Commission*, 242 N.W.2d 231 (1976).

In other words, the area between issues that are purely concerned with educational policy and those explicitly concerned with working conditions is the key zone of conflict between labor and management about what is negotiable. The nature of the conflict is summed up well in the Supreme Court of Nebraska decision, *School District of Seward Education Association v. School District of Seward in the County of Seward*, 199 N.W.2d 752 (1973).

Generally teacher organizations have given the term "conditions of employment" an extremely broad meaning, while boards of education have tried to restrict that term to preserve their management prerogatives and policy-making powers.

Drawing the Line

Depending upon the approaches used by courts in determining negotiability, state statutes have been interpreted narrowly or broadly. For the most part, the scope of bargaining has been narrowed when courts have invoked either the doctrine of management rights or public policy to exclude subjects from the bargaining process. The public policy exception is unique to bargaining in the public sector. Briefly, the public policy exception suggests that collective bargaining has the potential to damage the integrity of the political process and jeopardize the interests of citizens (Rabban 1990, *Harvard Law Review* 1984). In denying the existence of a permissive category of negotiation in *Ridgefield Park Education Association v. Ridgefield Park Board of Education* 393 A.2d 278 (1978),

the Supreme Court of New Jersey noted:

The very foundation of representative democracy would be endangered if decisions on significant matters of governmental policy were left to the process of collective negotiation, where citizen participation is precluded. This Court would be most reluctant to sanction agreement on matters which are essentially managerial in nature, because the true managers are the people. Our democratic system demands that governmental bodies retain their accountability to the citizenry.

Public policy has also been invoked as an issue in contract enforcement. In *Susquehanna Valley Central School District v. Susquehanna Valley Teachers Association*, 339 N.E.2d 132 (1975), the New York Court of Appeals denied the arbitrability of class size (see also Sackman 1977). In its opinion, the court stated:

Public policy, whether derived from, and whether explicit or implicit in statute or decisional law, or in neither, may also restrict the freedom to arbitrate.

When either management rights or public policy exceptions are invoked to except specific subjects from negotiations, courts have been faced with the task of developing legal tests or standards to determine whether the items in question fall into the area of education policy or working conditions. The tests and standards developed in this respect have differential effects on the scope of bargaining. In one of the most expansive decisions on the scope of bargaining in the public sector, *Board of Education of Union Free School District No. 3 of the Town of Huntington v. Associated Teachers of Huntington, Inc.*, 282 N.E.2d 109 (1972), the New York Court of Appeals held that only an express statutory prohibition against the negotiation of a particular item was grounds for preventing the employer from entering into an agreement. In the opinion of the court, *the obligation to bargain as to all terms*

and conditions of employment is a broad and unqualified one, and there is no reason why the mandatory provision of that act should be limited, in any way, except in cases where some other applicable statutory provision explicitly and definitively prohibits the public employer from making an agreement as to a particular term or condition of employment.

The *Huntington* standard was superseded by *Syracuse Teachers Association v. Board of Education*, 320 N.E. 2d 646, in which the phrase "terms and conditions" of employment was "limited by plain and clear, rather than express, prohibitions in the statute or decisional law." In *Susquehanna Valley*, the court saw fit to fix public policy "whether derived from, and whether explicit or implicit in statute or decisional law" as grounds for restricting the freedom to arbitrate.

There are essentially three kinds of tests developed by courts to determine if an item belongs to "working conditions" or "educational policy." The significant relationship test was established in *Clark County School District v. Local Government Employee Relations Board*, 530 P. 2d 114 (1974). In *Clark County* the Supreme Court of Nevada upheld the decision of the Local Government Employee Relations Board on the negotiability of the following items: class size, professional improvement, student discipline, school calendar, teacher performance, and differentiated staffing on the grounds that these items were "significantly related" to wages, hours, and conditions of employment. Subsequent to the court's decision, the statute was revised to limit bargaining to areas specifically listed in the scope of bargaining provision.

A second type of test is the balancing test. This is perhaps the most common legal test. There are several variations of the balancing test. Typically the test weighs or balances the interests of the employees against the interests of the district as a whole. In *Westwood* the Michigan

Employment Relations Commission arrived at its decision by balancing employee interests and management rights. The first state high court to adopt a balancing standard in resolving disputes about the scope of bargaining was the Supreme Court of Kansas in *National Education Association of Shawnee Mission v. Board of Education*, 512 P.2d 426 (1973). In the opinion of the court:

The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole.

The Kansas decision was echoed in the Pennsylvania Supreme Court's decision in *Pennsylvania Labor Relations Board v. State College Area School District*, 337 A.2d 262 (1975). The standard compelled the Board and courts in Pennsylvania to weigh the probable effect of an issue on the interest of the employee in wages, hours, and terms and conditions of employment against the basic policy of the system as a whole. Again in *Sutherlin Education Association v. Sutherlin School District* 548 P.2d. 204 (1976), the Oregon Court of Appeals required that the negotiability of individual items be determined by balancing "the element of educational policy involved against the effect that the subject has on a teacher's employment."

Recent balancing tests are more elaborate. The New Jersey Supreme Court established a three-part balancing test in *IFPTE Local 195, AFL-CIO v. State of New Jersey*, 443 A.2d 187 (1982). An issue is negotiable if it "intimately and directly affects the work and welfare of public employees," if it has not been "preempted by statute or regulation," and if it is a matter "on which negotiated agreement would not significantly interfere with the exercise of inherent managerial prerogatives pertaining to the determination of governmental policy." The New Jersey test was adopted by the South Dakota Supreme

Court in *Rapid City Education Association v. Rapid City Area School District No. 51-4*, 376 N.W.2d 562 (1985). In *San Mateo City School District v. Public Employment Relations Board*, 663 P.2d 523 (1983), the California Supreme Court upheld the three-part test for negotiability created by the California Public Employment Relations Board. Under the test a subject is negotiable if it is logically and reasonably related to hours, wages, or an enumerated term and condition of employment; the subject is of such concern to labor and management that conflict is likely to occur and collective bargaining is an appropriate means to resolve the conflict; and the employer's obligation to negotiate would not interfere with the exercise of managerial prerogatives essential to the achievement of the school district's mission.

The issue of management control has a more prominent role in the balancing test as opposed to the significant relationship test. Under the various balancing tests, it is not sufficient for a subject to have a significant relationship with working conditions for a subject to be negotiable. The impact of the subject on the teacher's interest in working conditions must also outweigh the interests of management in managing school operations or making policy for the whole school district.

A third method of determining whether a subject is negotiable is the topics approach endorsed by the Kansas Supreme Court in *Unified School District 501 v. Secretary of the Kansas Department of Human Resources*, 685 P.2d 874 (1984). The topics approach bears close resemblance to the first part of the three-part test used in *San Mateo*. Under the topics approach it is not necessary for a proposal to be specifically listed. All that is necessary is that the subject matter of the proposal "be within the purview of one of the categories specifically listed under 'terms and conditions of professional service'."

In a limited number of cases, subjects have been excepted from negotiations for reasons other than management rights or public policy. These include the interests of students and conflict with existing statutes (Davis 1989). In *Eastbrook Community Schools v. Indiana Education Employment Relations Board* 446 N.E. 2d 1007 (1983), for example, the Court of Appeals of Indiana ruled that the school calendar was not bargainable because

the calendar's effect on students and other public interests outweigh the private interests of the teachers . . . more basically, what is in the best interest of the students and the community is not always in the best interest of the teachers.

To illustrate how the same issue can be handled in different ways, in *Westwood* the Michigan Employment Relations Commission issued a completely different opinion on this issue. The MERC in *Westwood* held that "the rather substantial interest which the school teachers have in planning their summer activities outweigh [sic] any claim of interference with the right to manage the school district."

While associations have often been precluded from bargaining about matters of educational policy, they have been allowed in some instances to bargain about the impact of educational policies upon their members' working conditions. The Minnesota Supreme Court, in *Minneapolis Federation of Teachers, Local 59 v. Minneapolis Special School District No. 1*, 258 N.W.2d 802 (1977), held that teacher transfers are not negotiable, but the adoption of criteria by which individual teachers may be identified for transfer is negotiable and individual transfers are grievable. Also, in *West Hartford v. Decourcy*, 80 LRRM 2422 (1969), the Connecticut Supreme Court ruled that while the determination of extracurricular activities is the province of the board alone, the assignment and compensation of

teachers for extracurricular activities is a mandatory subject of bargaining.

Overview

Considerable variation in the scope of bargaining exists from state to state. Looking at the states as a whole, legal scholar David Rabban notes that only the narrowest working conditions seem clearly mandatory (for example, salary and supplementary employment). Holdings on other issues vary greatly among states. What is mandatory in one state may be permissive or illegal in another state. For example, class size is not negotiable in Alaska and Kansas, permissive in Wisconsin, and mandatory in Massachusetts. Teacher evaluation is not a mandatory subject of negotiation in Kansas. In Wisconsin, on the other hand, while the specification of who evaluates teachers and the nature of assistance to poor teachers is not mandatory, the procedures used in evaluation are mandatory subjects of negotiations (Rabban 1990).

The scope of bargaining in many states makes it difficult for many local associations to bargain about critical matters of educational policy. In an important sense, the difficulties teachers face in contributing to decisions about critical school-level issues affecting their practice is mirrored in the legal difficulties encountered by their bargaining representatives in participating in decisions that bear on the educational policies of school districts.

While the scope of bargaining is clearly an important factor in determining what is negotiated, it is not the only one. Because of local political and organizational factors, the parameters of bargaining within individual states exhibit wide variation and states of maturity. The scope of bargaining (as defined by statute and case law) defines the terrain of negotiations but does not determine the precise course that negotiations will ultimately take. This is powerfully illustrated in one

of the districts studied by Lorraine MacDonnell and Anthony Pascal in their original examination of collective bargaining in public education:

In some cases local political and organization factors seem to prevail over the mandates of state law. For example, one district we visited was located in a state with a broad statute. Yet, this district had one of the narrowest contracts of any in our sample. Community attitudes were strongly against teacher collective bargaining; and the school board, which played a major role in the bargaining process, simply refused to negotiate on items which were well within the legal scope of bargaining. (MacDonnell and Pascal 1979)

At the same time, local associations in states without any bargaining statutes and only minimal sanctions for their activities have made great strides in negotiating change. Jefferson County, Kentucky, managed to negotiate a comprehensive agreement governing a districtwide site-based decisionmaking program in the absence of a state bargaining statute.

Clearly the legal environment is not the only determinant of what actually gets into a contract. The efforts of the local association and the local bargaining climate are also critical. Nevertheless, it must be said that trying to negotiate in the context of an unfriendly legal environment is the equivalent of playing cards with a stacked deck. On balance, a broad scope of bargaining that encourages both parties to resolve their differences at the negotiating table is infinitely preferable to a system that reserves broad areas for unilateral determination by management.



Bargaining Educational Policy

An Unfinished Agenda

It is difficult to determine precisely how extensive bargaining over educational policy has been over the last 25 years. Policy bargaining has only rarely been subjected to systematic inquiry and analysis. The evidence available, while mixed, indicates, not surprisingly given these legal barriers, that collective bargaining over questions of educational policy is more the exception than the rule. In a longitudinal study of nine districts, all of which had engaged in hard bargaining by 1965, Charles Perry and Wesley Wildman found that the basic dimensions of the contractual system of teachers' rights had been fairly well established by 1967. Its central elements included the following issues: provisions governing personnel files, teacher evaluation procedures, teacher assignments, and transfers. The study found little evidence of an extension of teacher rights to matters of educational policy in spite of contract provisions governing class size, teacher transfers, school integration, student discipline, and pupil grading and promotion (Perry and Wildman 1970).

Between 1967 and 1977 the major additions to the contracts of the districts studied concerned promotions and layoffs. Reduction-in-force provisions, which were nonexistent in 1967, were included in eight of the nine districts by 1977. Similarly, while provisions concerning promotion were weak or nonexistent in the early 1960s, six of the nine districts studied now have strong provisions concerning promotion. Despite these and other provisions dealing with "quality integrated education" and academic freedom in several of the contracts, Perry found no evidence to contradict his earlier finding that teacher rights had not been extended to the control of educational policy (Perry 1979).

In a study in which the data on contract provisions extend to 1980, two researchers concluded that teachers' orga-

nizations had negotiated little contract language governing the *formative* areas of educational policy making, which they assumed would figure prominently in the agenda of a professional union. In their study of contracts between teacher organizations and school boards in Connecticut, for example, contract provisions concerning these issues appeared with the following frequency:

- Teacher participation in curriculum or instructional policy committees - 35%
- Teacher participation in textbook selection - 20%
- Teacher participation in hiring decisions - 2%
- Provisions concerning student grading and promotion - 4%
- Student discipline procedures - 6%
- Teacher participation in school budgeting decisions - 1%

In their national review of teacher contracts, the authors found that, as private sector unions do, teacher unions tended to negotiate such items as the levels of compensation and benefits, employment leave, a grievance procedure that uses neutrals, the length of the work schedule, seniority rights in transfer and discharge, and some form of union security. The principal distinctions between the private sector and public education sectors involved matters specific to education such as teacher evaluation and scheduling restrictions. Issues such as the length of the workday and seniority provisions in personnel decisions occur with even less frequency in teacher contracts than in private sector contracts (Finch and Nagel 1984).

Noncompensation Items in Contracts

The most recent study of bargaining over noncompensation items lends support to

the general results outlined above. According to McDonnell and Pascal (1988), teacher organizations registered impressive gains in bargaining over noncompensation items during the 1970s. By the end of the decade, over half of the bargaining units studied had negotiated contract provisions that regulate the length of the school day, allow teachers to respond to administrators' evaluations, permit teachers to exclude disruptive students from their classrooms, and outline clear procedures for districts to follow if they have to reduce the size of their teacher force. Disappointingly, however, fewer than a third of the teacher organizations in the sample had been able to negotiate strong limits on class size, an instructional policy committee in each school, or teachers' right to refuse assignments outside of their fields. In fact, the right to refuse out-of-field assignments decreased from 14 percent of the responding districts in 1975 to only 7 percent in 1985. Perhaps the most significant finding for our purposes is that *teacher unions made little progress in obtaining new contractual provisions after 1975. With relatively few exceptions the improvements in working conditions teacher unions had attained by 1975 were not enhanced in the 1980 and 1985 contracts. (McDonnell and Pascal 1988)*

Impasse Procedures

To some degree local associations have been hindered in their efforts to negotiate substantive policy areas not only by statutory language and judicial decisions but also by the impasse resolution procedures contained in the majority of state statutes. Only seven states grant teachers' associations the right to strike. Fourteen states impose penalties in the event of a teachers' strike. Those states that do not allow strikes mandate mediation, fact-finding, arbitration, or some combination thereof in

the event of an impasse.

Currently seven states have some form of compulsory binding arbitration. Ten states permit binding arbitration in the event of an impasse. However, arbitration may well be a more conservative process than negotiations in expanding the range of items in individual contracts. Unequivocally, interest arbitration to resolve contract disputes has been critical in increasing compensation under certain conditions. However, arbitration's record as a resolution mechanism to expand the scope of individual contracts is rather disappointing. Finch and Nagel (1984) noted that

the direct impact of arbitration on policy issues is surprisingly small. Teachers' proposals for policy change have been overwhelmingly rejected to the extent that these proposals affect the scheduling or size of classes, the length of the workday, the scope of teachers' work duties, or the qualifications for teacher advancement. Teachers' field of success, by comparison, has been limited to a rather narrow range of traditional union concerns—recognition of seniority rights in staff reductions, provision of additional compensation for a lengthened work schedule, institution of grievance arbitration, and authorization of agency fee provisions (a costless item for school government).

In virtually every category of contract provisions examined by the authors, negotiations produced a greater degree of acceptance of teacher organizations' proposals to change contracts than did arbitration. The evidence suggests that arbitrators generally avoid tampering with what are perceived to be the managerial concerns of school government. In the areas where policy change has been awarded, it is in the context of strong bargaining trends (Finch and Nagel 1984).

The arbitration pattern faced in education also seems to hold in the non-education public sector. A comprehensive

national study of arbitration in the police services discovered that unions' success in arbitrating noneconomic matters was only 20 percent. The study's authors came to the conclusion that "arbitrators seem to view their role in a conservative rather than an innovative manner" (Finch and Nagel 1984).

Collective bargaining does increase teacher influence and participation in district decisions by limiting the extent of unilateral decisionmaking by administrators. However, the use of collective bargaining to negotiate substantive changes in educational policy has proven to be a more elusive goal. This was not a major problem as long as the basic structure of public education remained relatively stable. With the onrush of pressure to reform schools, however, questions of educational policy have assumed critical importance. The ability of associations to protect the rights of their members may depend in part on how successful they are in negotiating educational policy changes as well as appropriate relationships between the contract and various instructional improvement programs.

Integrating School Restructuring and Collective Bargaining

As the education reform movement becomes more concerned with school restructuring efforts, it becomes increasingly important for local associations to determine an appropriate relationship between the process of collective bargaining and the process of educational change. Unless a healthy relationship can be developed between these two processes, there is the potential for overlap and conflict between them. This would be divisive for the local association and detrimental to the bargaining process.

The potential for conflicts and difficulties occasioned by restructuring has created apprehension if not outright opposition on the part of some association leaders and members. To simply oppose efforts at educational improvement, however, is often not the best strategic tack to take. Administrators can create a situation in which teachers' legitimate hopes for educational improvement are pitted against their stake in the outcomes of the collective bargaining process. In other words, a false dichotomy created between professional concerns and contractual rights and obligations can be used to divide the bargaining unit. The strategy administrators may use to divide the bargaining unit is to suggest that collective bargaining is inherently inimical to the process of fostering educational change. To quote Jonathan Howe, former president of the National School Boards Association:

The collective bargaining process, with its inherent adversarial character may not be the most effective means of fostering collegial, productive communication between and among teachers, school administrators, and school boards regarding educational and operational issues. Teachers and school administrators, we believe, hold the key to achieving the goals of both instructional excellence and equity in the nation's public schools. Indispensable to the attainment of

these twin goals is open communication which characterizes the cooperative and harmonious spirit that pervades every successful professional relationship [emphasis added] Neither collective bargaining nor any of its nuances should be permitted to impede the educational preparation of our children for the 21st century. (Howe 1988)

While Howe indicates that he in no way intends to diminish the role of collective bargaining, he implies that bargaining interposes conflict in what would otherwise be cooperative, professional relationships and so is an obstacle to reform.

This argument is, however, suspect. The reality is that even professional relationships are conflictual as well as cooperative. In virtually all manager-practitioner relationships, conflict exists around institutional policies as well as the allocation of resources (Freidson 1986). At the same time, bargaining is not inherently adversarial. Much depends upon the specific issues involved as well as a host of local factors such as the labor relations history, the principal actors involved, and the relationship of the local association's leadership to the members.

Today the myth that professional relationships are constructive and devoid of rancor while collective bargaining is a largely adversarial process dedicated to the status quo is held not only in the larger society but, more disturbingly, by many within the NEA family. Since the advance of professional issues was an integral and important part of NEA's bargaining program in its early years, it may seem surprising that collective bargaining became separated from education policy.

Yet the view that bargaining and policy development are distinct and separate processes has been supported and encouraged in the statutory and judicial framework surrounding collective bargaining. On the whole, public sector bargaining statutes and jurisprudence have

given management the unilateral right to determine policy and left working conditions alone in the realm of bargaining. When subjects straddle both areas (policy and working conditions), the judicial rulings on allowing subjects to be bargained is mixed at best.

This historical divorce of policy and collective bargaining led to predictable behavior within the Association. As administrator opposition to bargaining over policy issues and external interventions into the bargaining process narrowed the range of bargaining, many bargainers came to accept the limits of the process and showed little concern for the areas determined to be outside bargaining because they represented "things that we can't deal with." At the same time, those Association leaders and members concerned primarily with professional issues came to have little interest in bargaining because it was not addressing their concerns.

School restructuring did not create the tensions between collective bargaining and professional concerns that now exist in our Association. What school restructuring did was to bring these tensions to the surface. In many ways this is fortunate. We have been given a rare opportunity, if we use it wisely, to create ways in which these heretofore distinct areas of Association interest can be woven together in a coherent and constructive manner. Education reform and school restructuring have tremendous potential importance for our organization. We will consider this from both a labor and a professional perspective.

The Labor Perspective

School restructuring holds for education employees the promise of greater control over their working lives. Unions in the private sector have long sought some measure of control in the workplace. Both before and immediately after the close of World

War II, unions attempted to secure the right to have a role in making operational decisions along with employers. The United Steelworkers wanted to discuss production technology. The Rubber Workers found new plant openings to be a critical issue to discuss with management. In the auto industry seasonal product demand represented a critical issue with which the United Automobile Workers wished to come to terms. In most industries unions wanted to discuss the relationship between corporate financial policies and wages (Brody 1980). The bargaining table and the picket line represented the primary arenas in which unions expected to expand the range of their influence.

For unions, incursions into what was then the sole province of management made good sense. Management decisions had significant and lasting impact on the welfare and working conditions of each union's members. On the other hand, management could only lose some measure of control over the enterprise from their accommodation at the negotiating table, and they resisted union demands on this score most vigorously. They even precipitated strikes. The choice faced by unions was to accept rather generous wage settlements, which would satisfy many of their members, or to suffer prolonged strikes with uncertain outcomes. Today it is clear that management has retained its control of the enterprise, and unions have been left to negotiate wages, hours, and working conditions narrowly defined. It must be pointed out that the historic compromise of more money for the membership instead of the right jointly to determine firm policies and operational decisions was engendered by union members' willingness to accept wages in place of the right to determine organizational policy as much as by management's stiff resistance. Whatever the principal cause, the compromise did long-term damage to the American labor movement. In his scholarly work on the decline of the American steel industry, the distin-

guished journalist John Hoerr (1988) writes:

The steel union's largest failure—and it is a failure of most unions—has been its reluctance to tackle issues concerning the organization of the workplace. . . . Local unions policed the workplace to ensure that management lived up to its detailed job descriptions and various "rights" spelled out in national and local agreements. While this classic "job-control unionism" guaranteed due process to workers, it did not really challenge management on operational decisions and ways of improving quality and output. Once workers are protected against arbitrary discipline, these issues are by far the most important that arise in any work situation because ultimately they determine the competitiveness of the firm and the long-range job prospects of the workers [emphasis added].

The irony here is that the "job-control unionism" characteristic of industrial production may have been the product of unions' inability to secure their members' rights to participate in making decisions about production. In defending the UAW's willingness to accept a contract that had one classification for line workers and three for skilled trades, an article in *Solidarity*, the union's newspaper plainly stated:

But the UAW fought for the more than 100 job classifications in traditional auto assembly plants because workers had no control over job content on the shop floor. At NUMMI [a Fremont, California, facility co-owned by GM and Toyota] they do. If the 1 job classification is a concession to Toyota, it is even more emphatically a concession to the age-old thirst of American workers for creativity, flexibility, and degree of job control. (Quoted in Lee 1991)

If the industries whose employees they represent are not healthy, unions themselves are not healthy. Layoffs, relocations, declining profits, crises of competi-

tiveness, and downsizing are not the stuff from which good contracts are produced. The downward pressure on direct and indirect compensation created by intense competitive pressures and the radical restructuring of many firms has led some unions to return to their earlier interest in power sharing as a means of making their industries more competitive and their members' jobs more secure.

In the last 15 years, unions and managements have set in place a host of measures ranging from joint labor-management committees to autonomous work teams that are designed to involve workers and their unions more fully in the day-to-day operations of their firms (Hoerr 1988; Heckscher 1988; Kochan, Katz, and Mower 1984; Cohen-Rosenthal and Burton 1987). These new arrangements are not without their risks. (See NEA 1988 for a discussion of the issues surrounding various forms of employee participation.) Nevertheless, unions participating in joint endeavors with management have recognized that they face even greater risk if they continue on the same path and decline along with their industries.

Several experiments between American unions and Japanese-owned enterprises in the United States (Bridgestone, Mazda, Sanyo, and NUMMI) underscore the importance of striking out in new directions. In the words of Massachusetts Institute of Technology labor relations professor Thomas Kochan:

The most important lesson for labor leaders to draw from these cases . . . is that the majority of American workers respond positively to both these management practices and to the role the union plays in these plants. Thus, the role of the union is changed in fundamental ways in these relationships. Union representatives continue to be responsible for articulating and representing the interests of the workforce but they also become more active partners in the design, implementation, and manage-

ment of human resource policies and practices. Moreover, they cannot depend upon mobilizing rank-and-file support for the union based simply on distrust of management or dissatisfaction with working conditions. Instead, the union must be viewed by workers as articulating and representing workers' concerns for employment security and economic advancement in high level consultations and negotiations with corporate and plant management and in protecting individual worker rights at the shop-floor on an on-going basis. (Kochan 1991)

While there is no immediate chance that public education will go out of business, as is the case with many American companies, education is under sharp attack from many quarters. Lowered public confidence in the institution and declining revenues in many districts create a harsh climate for negotiations. Like unions in different sectors before them, some local associations have begun to participate with district administrators and community groups to improve education quality and meet new demands.

The Professional Perspective

From a professional perspective, too, the greater measure of autonomy held out by school restructuring is vastly preferable to a hierarchical system that governs by directive and not by discussion and consensus. An educational management system that systematically deprives its professionals of the opportunity to expand and use their knowledge is a primary cause of frustration among individuals and ineffectiveness in school organization.

Professional work is distinguished from other types of work by the specialized knowledge required to perform it and the opportunities to use that specialized knowledge. Bureaucratic work organizations tend to discourage the exercise of discretion

that defines professional practice and thus generate conflict with those who identify themselves as professionals (Hall 1969).

In the context of a bureaucratic organization such as a school district with multiple layers of authority, the organization serves as an impediment to the utilization of professional skills and knowledge. In the view of Charles Thompson, the organization of education appears to foster somnolence more than growth:

There is a certain choreography to our days, and it would be unthinkable difficult to get through them without accepting some pre-programmed socially prescribed patterns. Keep to the right in traffic, stop at red lights, report to school on time, read from left to right and down the page, get the kids' attention before giving directions, cover all the material before giving the chapter test. But relying on socially given structure continually day in and day out becomes a form of sleepwalking. Before long, we are no longer conscious of making decisions about driving, reading, or even about teaching. We enact familiar patterns out of some combination of habit and deference to authority. Decisions are made, but we are not sure who is making them. Perhaps the principal, perhaps the superintendent, perhaps the board, perhaps the state department bureaucrats, or maybe federal bureaucrats, or is it the publishers and the big testing companies. (Thompson 1989)

What Thompson is suggesting is that much of what occurs in the classroom is controlled from outside the classroom and from outside the professional group. Don Wollett makes the claim that teachers in public schools are "the victims of a kind of one-dimensional professionalism: professional responsibility without professional authority" (Wollett 1969).

In professions like law and medicine, both theory and practice are controlled from within the profession. By contrast, in education teachers are part of a more inhospitable structure in which control

over their daily practice comes from outside the professional group. Administrators and school boards, not teachers, make key policy decisions in school districts. Outside experts, not teachers, produce the textbooks and other materials used by teachers in their work. Often teachers even lack control over textbook selection. The increased professionalization of teaching depends, then, on a reduction in the external controls that direct the work of teaching professionals (Hall 1969).

Until recently the prospect of granting greater discretion to individual teachers has been hampered by the need to coordinate efforts among teachers. Although delivered by individual teachers, education is a collective enterprise. There is recognition of this in the diploma or degree-granting process. While individual teachers give grades upon a student's completion of a course, it is the school system that awards the diploma.

One of the difficulties faced by school boards and school administrators in granting discretion to individual teachers has been the question of how the exercise of that discretion will affect the work of the whole organization. In other words, how can the school system be assured that the exercise of that discretion will work in consonance with and not against the principal goals and objectives of the larger school system. Today reformers argue that it is possible to meet both objectives (greater discretion for teachers and coordination of individual teacher efforts):

School systems might be able to give their individual teachers more discretion while achieving closer coordination of their separate efforts. By promoting agreement on ends, by involving teachers in the initiation and development of policies that they are expected to implement, and by promoting collegiality and closer working relationships among teachers, reformers argued, it should be possible to relax formal

controls on how teachers perform their jobs. (Bacharach and Shedd 1989)

Bacharach and Shedd come to the conclusion that "teachers' professional and union interests imply collective responsibility, not individual autonomy." Unlike the fee-for-service professions in which the individual professional is free to exercise his or her best judgment, in the context of the school the individual professional must coordinate his or her efforts with those of other professionals. This distinguishes teachers from most other professions and suggests a more collective direction for professionalism.

The Importance of Negotiating Change

From both the standpoint of labor relations and the status of the teaching profession, school restructuring offers rich possibilities that the present organization of education does not offer. Associations have a great deal to gain by promoting such efforts. They also run the risk of being seen as obstructionists if they simply oppose school district initiatives (Chanin 1989). There is need for caution, however, if this occurs outside of collective bargaining. Teachers run the risk of remaining the junior partner in decision-making areas lying outside of collective bargaining. From the early days of collective bargaining in public education, a significant informal arena of joint study committees has existed side-by-side with collective bargaining (Love 1968; Perry 1979; Finch and Nagel 1984). For the most part, these committees advise administrators on policy issues that lie outside the bargaining process. By means of this informal sector, associations have, it is true, been able to extend their influence into areas that they have not been able to penetrate through the bargaining process itself.

Yet the influence gained in these areas is often a far cry from the "parity of legal standing and rough parity of power" (Wollett and Chanin 1970) that the NEA and its affiliates sought by supporting collective bargaining for teachers. A study of 1979-80 contracts from Connecticut and Michigan revealed that not one contract from the Connecticut sample and only 8 percent of the contracts from the Michigan sample required the school board to act on recommendations from a curriculum committee (Finch and Nagel 1984). When committees have no power, there is a good chance that their recommendations will not be heeded, as many of our members will attest. This not only usurps people's time and energy for no good purpose, but it also discourages them from participating in future efforts.

As noted in the beginning of our dis-

cussion, a more serious problem concerns the possibility that various decisionmaking councils in schools and school districts could, if not regulated by collective bargaining, promulgate policies and rules that conflict with the contract. Even if a policy is not in direct conflict with a contractual provision, it could lead to practices that undermine the integrity of contractual provisions. For example, the desire to have a role in shaping policy could lead some teachers to ignore their right to preparation time, limitations placed on meeting time, or specified hours of work, thus leading to slackened enforcement of the contract.

On another level, administrators may use programs to weaken the association. Associations may be given only token presence in school restructuring efforts. Teacher representatives may be selected by the administration, and their opinions on issues contrasted with association positions. In this way the association may be portrayed as unrepresentative of teachers' views.

To seek the benefits that school restructuring offers to both members and the association and to avoid these and other pitfalls, local associations contemplating serious involvement in school improvement efforts are strongly urged to negotiate contractual provisions governing the efforts (NEA 1988). The negotiation of school restructuring efforts performs several important functions. *First, the contract defines an appropriate scope for issues to be taken up in school restructuring efforts and thus ensures that the efforts will not grow in a fashion antagonistic to the contract and the collective bargaining process.* This prevents employers from using school restructuring to erode individual rights and protections set forth in the contract. Without a clear division between items suitable for district-level negotiations and subjects appropriate for building-level discussions, there is some danger that critical labor relations issues can be transferred

from the collective bargaining arena in which teachers have specific legal rights to a school council in which they lack those same rights.

Although many of the issues dealt with in school restructuring efforts, such as student grouping, student assessment, and pedagogy, are not bargained, this is not true of all issues involved in restructuring. Contracts contain provisions dealing with a wide variety of basic working conditions such as the length of the workday, the calendar, transfers, and class size, which have the potential to conflict with specific proposals by individual schools to improve instruction.

Strong language notwithstanding, a school restructuring effort may stray beyond the bounds originally established for it and move into contractual areas. This occurs because these efforts actually encourage subsets of employees within each bargaining unit to identify and resolve issues and problems, to develop strategic plans, and sometimes to reorganize existing workplace arrangements. Whether contractually regulated or not, school restructuring efforts do not usually come with fixed agendas, nor should they. These are worked out by the participants at individual schools. A contract may specify the kinds of issues participants might address, such as curriculum and pedagogy, but give participants wide latitude in choosing appropriate subjects in these areas.

Because it is difficult to predict with any degree of precision what issues will actually be discussed, there is the potential for some issues or, even more likely, for the solutions proposed to deal with individual issues to come into conflict with the collective bargaining agreement. Local associations have handled this problem in one of three ways. In some cases, they have enforced a strict separation of the contract. If any school-based effort threatens to violate a contractual provision, the school's plans must be changed. In Bellevue,

Washington, for example, where this kind of provision is in place, the district and local association will provide assistance to help the school determine if it can do what it wants to do without violating the contract. If it cannot, then it is not allowed to proceed.

If a district and local association agree to the possibility of limited deviation from the contract, those items that are essential for the protection of teacher rights such as the calendar, grievance procedure, salary schedule, transfer and assignment procedures, and reduction-in-force procedures can be set outside the bounds of any building-level discussion by the parties involved. The potential scope of the program thus becomes everything not explicitly prohibited by the contract, board policy, and state regulations.

Another method for dealing with the relationship of the contract to a school restructuring effort is to permit a limited range of contract provisions to be waived by individual buildings in order to permit building-based restructuring efforts to proceed. In such a situation, the local association considers requests for individual contract provisions to be waived from individual buildings. To do this the local association sets up internal procedures to review individual requests. In Seattle, Washington, for example, an association review committee consisting of the local president, the executive director, the chairperson of the grievance committee, and a member of the bargaining committee reviews requests for waivers from individual buildings. In this manner, the local still retains control over any deviations from the contract. The negative side of the waiver approach is that tension could be created between the local association and its members in a particular building if it is forced to turn down a waiver request.

A second reason why negotiated agreements may prove critical to the success of school restructuring efforts is that they have the potential to require districts to commit

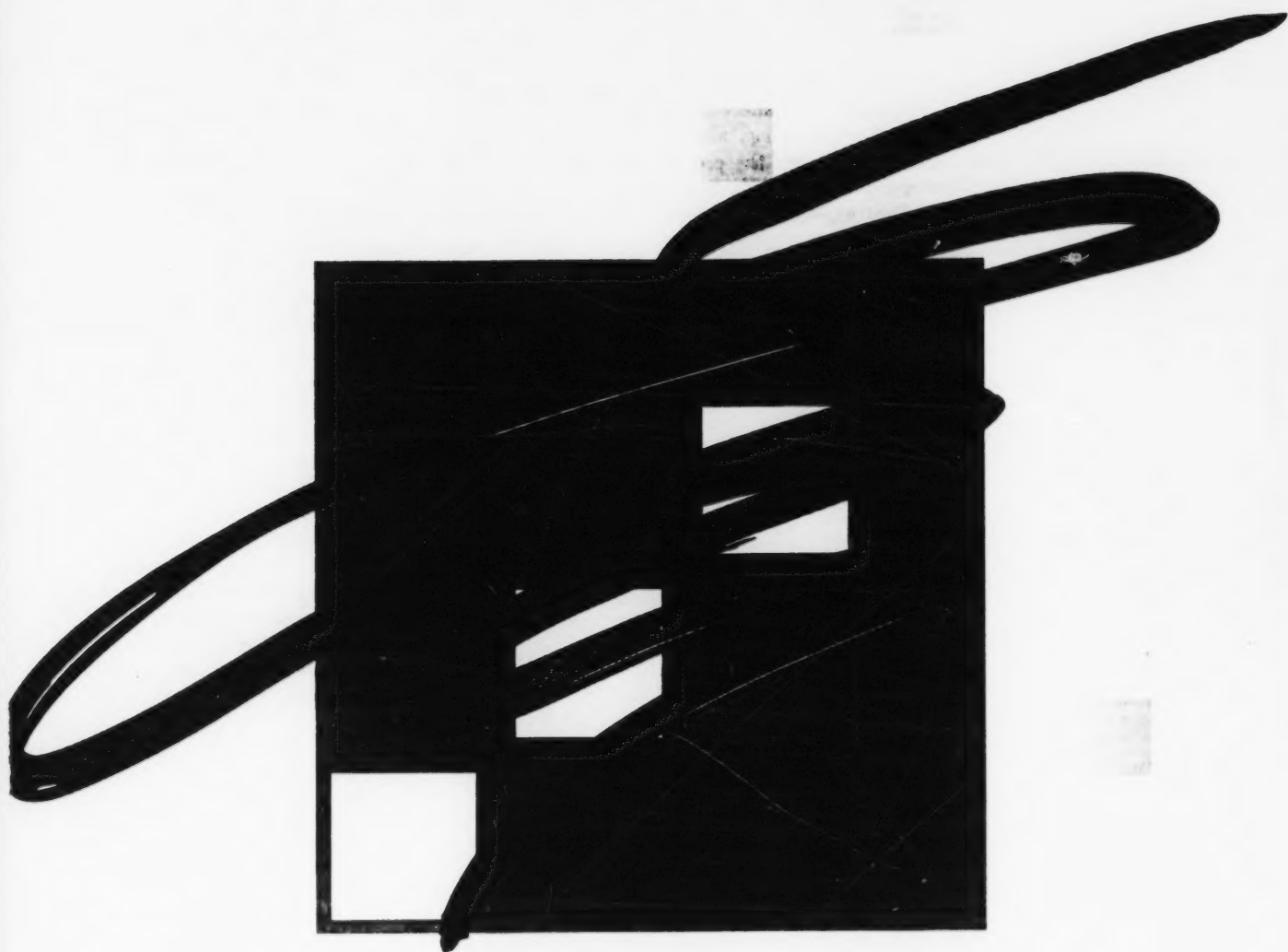
resources to school restructuring efforts. Many efforts fail because they lack the funds for training participants, implementing new programs, and providing participants with adequate time to assume additional responsibilities.

Third, negotiated agreements are critical to the success of the school restructuring effort because they institutionalize district policy on a restructuring effort. Through collective bargaining agreements, local associations and districts ensure that school restructuring efforts are not reliant upon particular individuals for their support and continuation. Although many efforts have flourished because of a supportive superintendent, there can be no long-term guarantee of stability in such a situation. Contract language gives the association a source of power that does not depend upon individual personalities.

Fourth, in using the collective bargaining forum to negotiate the parameters of school restructuring efforts, the local association is able to ensure its role in the process of educational change. We know that not all school restructuring efforts are necessarily healthy for the bargaining agent. Districts may use school change efforts to undermine existing local association policies and practices. Contract language that sets out the role of the association (representation on committees, a district oversight committee, and other such protections) together with a program of regular communication with the members forms solid protection against the possibility of co-optation.

Finally, when a local negotiates a school restructuring effort, the local communicates to its members its role in securing the program for them. When an

effort is not negotiated, it may seem to members to be a gift of the administration. Negotiating an agreement around school restructuring also allows a local association to take an active role in school change instead of merely reacting to what the district administration is proposing. Of course, if a local association negotiates a school restructuring effort and its members do not want it, members will surely resent the association. Members' interests and desires are preeminent considerations in negotiating school restructuring efforts.



Considerations in Negotiating Change

Some situations are more congenial than others in using the collective bargaining process to initiate and regulate the process of educational change. In the following sections, the factors that support successful change are discussed.

The Existing Agreement

According to McDonnell and Pascal's most recent work (1988), contracts that are relatively rich with professional issues are those contracts with good bread-and-butter provisions. This suggests that unless certain thresholds are reached with respect to basic working conditions, professional issues are not likely to be negotiated with any frequency. In this sense the negotiation of professional issues is in no way a substitute for the negotiation of sound agreements on issues like salary, class size, and transfer rights.

A Good Relationship

Second, much depends upon the relationship between the association and the district. The issues related to education reform are complex. Working out solutions appropriate for the problems now confronting education requires a spirit of mutual respect and commitment. While it is not always possible to have the luxury of a good relationship with management, it is a good idea to try to repair serious problems before going to the bargaining table. If the labor relations climate in a district is defined by rancor and mistrust, meaningful change is considerably more difficult.

Member Support

Third, the leadership of the association

must have the support of its members. Because of the historic narrowing of bargaining and the long history of administrator opposition to association involvement in policy issues, many of our members see bargaining solely in terms of bread-and-butter issues. If a local association successfully negotiates a contract provision to initiate educational change and its members do not understand why this occurred, it will breed division and dissent within the association, despite how important such a provision may ultimately prove to be. Members must have a grasp of the issues prompting the movement of bargaining into a new area. Leaders must have the support of their members. Before attempting to negotiate provisions related to educational change or restructuring, it is critical that leaders determine the attitudes of their members. If members do not understand the importance of a particular issue, they must be organized before bargaining actually begins.

The Funding Dilemma

Fourth, the new program(s) must have adequate resources. Despite the overwhelming public concern for education and support for educational change, the revenues available to education have increased only incrementally in these years of education reform. At the same time local school district budgets have been severely strained by rising expenditures in other areas such as health care. In many instances premium increases have been high enough to depress increases in direct compensation (Yrchik and Kahn 1989). This puts local associations in an interesting position. Clearly most NEA members would regard health care benefits as more critical than education reform efforts. At the same time, to maintain its long-term position in the district in the context of reform the local association must seek

resources to fund educational change efforts. In a large number of locals today, too many priorities chase too few dollars, creating virtually insoluble dilemmas for bargainners.

Present prospects for improvement in educational funding are not encouraging. Steven Gold, a former staff member of the National Conference of State Legislatures, sees the fiscal problems of state and local governments as a permanent feature of the 1990s. In Gold's view, many states will have deficits in which "the spending needed to maintain the current level of services will exceed revenue from the existing tax structure on a continuing basis" (*State Policy Reports* 1991).

The state and local fiscal crisis interjects a loud note of uncertainty into the reform movement. According to Gene Wilhoit, executive director of the National Association of State Boards of Education:

The vulnerability of reform efforts is a concern in almost all the states. There is still an intense interest in education improvement, it is just butting up against a terrible economic reality. (quoted in Harp 1991)

Roughly 30 states are experiencing severe budget problems and the hardest hit, such as Ohio and Massachusetts, are cutting back educational funds earmarked for reform initiatives (Harp 1991).

Having said this, it also stands to reason that if you are seeking to change a structure in which administrators make decisions and teachers implement them, you will need some additional funding. Teachers will have to be given a reasonable amount of time during the school day to make decisions. In essence, the structure of the school day will have to be altered to accommodate teachers' needs for planning time. Teachers' roles will likewise have to be modified to include planning and program evaluation.

In the private sector when operations are restructured to permit greater

employee involvement and decision-making, employees are provided with adequate training, meeting space, and time to make decisions in the course of the workday. Unless additional funding is secured, the additional resources required by a more participative system can be met only by the redeployment of existing district resources. This is a more difficult situation to deal with than when funding can be increased, because existing interests within and outside the bargaining unit can be affected. The key question in these situations is always: Is there something we are doing now that we can do differently? For example, are there new instructional models that will free teachers up for a portion of the school day? Does participative decisionmaking duplicate efforts of some central office staff, i.e., is the administrative component of the school system too large for a decentralized decisionmaking system? These are difficult questions, which signal tough choices. The other choice, however, in which we simply allow public education to decline without taking any remedial measures is even more haunting.

Ultimately, it is probably true that the success of education reform hinges upon a successful resolution of the acute crisis in public funding, which is itself linked to the general health of the larger economy. However, in the short run we can and must take the steps that are within our grasp.

The Scope of Bargaining

Finally, the scope of bargaining may present significant problems to bargainners. While the scope of bargaining has always been a critical consideration in local bargaining efforts, it takes on new significance in the context of education reform. Some of the most dynamic areas of public education today (e.g., curriculum) are outside the duty to bargain of most states. If we are

not successful in using collective bargaining to negotiate about issues related to these changing areas of education, there is a real danger that collective bargaining could become less important. It would still be used to negotiate wages, hours, and working conditions narrowly defined, but its importance in the overall context of school district governance and operations would diminish.

The consensus of commentators on the scope of bargaining appears to be that the scope of bargaining should be expanded (Rabban 1990; *Harvard Law Review* 1984; Edwards 1973). This is easier said than done, however. Fiscal austerity has returned in many states and cities as our economy and population undergo massive changes. And with fiscal austerity has returned an urgent need to contain school district budgets. *The Harvard Law Review* (1984) has said that the restriction of the scope of bargaining in the public sector is defensible only when the issues over which bargaining is precluded are "questions that directly affect the public interest, not the public pocketbook." At the same time, what may be morally defensible is not the same as what may be financially and ideologically acceptable to school district administrations.

While some enlightened administrators are now willing to discuss issues related to the restructuring of education at the bargaining table, many would prefer that this be accomplished through traditional informal channels. The legal framework surrounding public sector bargaining makes most issues related to education reform permissive subjects of bargaining in many states. This makes it more difficult, but by no means impossible, to discuss these issues at the table. It means mobilizing the membership and organizing community support for change. In a smaller number of states, however, education reform issues are illegal subjects. In these areas, it will be necessary to resort merely to drafting some kind of working under-

standing or relying on informal discussion to develop change-oriented programs.

It has been suggested that the problem of an excessively narrow scope of bargaining found in a number of states might be remedied by the introduction of consultation provisions in state statutes that require school boards to consult or meet and confer with local associations on matters of educational policy. Provisions currently exist in California, Hawaii, Indiana, Maine, Minnesota, and Pennsylvania. Policy exceptions to the scope of bargaining are founded on the notion that collective bargaining as a bilateral process is ill-suited to the crafting of policy on issues that concern a number of groups other than the employee union. However, the public employee union has a legitimate interest in many policy areas. Consulting provisions recognize this interest and provide alternative channels for discussing those policy matters that bear on working conditions in some fashion. The relegation of policy issues to a meet and confer type of issue or advisory process allows the public employee union influence but still allows elected public officials the right to consider the views of other constituents. In other words, this process removes the legal grounds for objecting to union involvement in policy formation (*Harvard Law Review* 1984).

In states that employ this distinction, the exclusive representative of teachers has the right to bargain over wages, hours, and working conditions but may also "meet and confer" or "consult" with the district regarding matters of educational policy. In other words the role of public employee unions varies with the nature of the issue involved (*Harvard Law Review* 1984). Rabban (1990) notes that these kinds of provisions have the potential to relegate public employee unions to the role of "impotent discussant." At the same time he points out that the theoretical differences between meet and confer provisions and collective bargaining often evaporate in

practice. Issues that were once discussed in meet and confer sessions tend to wind up in collective bargaining sessions. Nevertheless, we must add that collective bargaining itself is the preferable course when circumstances permit. Our local associations in the states that designate certain items as meet and confer and consulting issues attempt to admit these issues to the collective bargaining process when circumstances permit.

The question of the scope of bargaining is potentially the knottiest problem relating to bargaining for educational change. Educational policy is the area in which school districts have historically exhibited the greatest intransigence and courts have shown their greatest support for management's positions. We would be kidding ourselves if we assumed that because reform is on everyone's mind these days, the position of school boards and administrations on this question is changed. We do not have control over the legislatures or courts on this question. Nor can we tell administrations what their attitudes toward bargaining should be. However, we can educate our members to understand the critical importance of bringing educational reform and collective bargaining into some reasonable alignment. We can organize them to support efforts to bargain about new issues. We can enter into discussions with school district administrations, parents, and opinion leaders in the community about what we are trying to accomplish. And we can explore among ourselves the best long-term strategies to pursue on a national, state, and local level to expand the range of negotiations to include issues related to educational policy.

One thing state associations might consider is trying in some systematic fashion to link legislation concerning restructuring to the right to negotiate or, at least, to formally consult on matters of educational policy.

Examples of Bargaining for Change

In spite of the obstacles, bargaining for change is possible. In recent years a number of NEA affiliates have initiated change efforts through the collective bargaining process or sought to regulate existing efforts. This has occurred in states with bargaining statutes and states without bargaining statutes. The contract articles and the specific programs initiated as a result of the articles vary widely across districts. The examples given here are Jefferson County, Kentucky (a state without a bargaining statute), and Greece, New York.

Jefferson County, Kentucky

In 1988 the Jefferson County Education Association and the Jefferson County Board of Education in Kentucky negotiated a participatory management program in the school district. The contract involved a scheduled phase-in of participatory management, the Jefferson County term for site-based decisionmaking in the school district. According to the terms of the agreement, the first year set a limit on involvement of 24 schools during the 1988-89 school year. For the program to expand, a majority of employees in schools participating in the effort must vote in favor of expanding the model. After a positive vote of employees in participating schools in 1989, the pilot was expanded to 48 schools. A positive vote in 1990 brought the number of participating schools to 96. At present 131 sites have elected to participate in the county's site-based decisionmaking effort.

Participation was and is voluntary. For a school to participate in the Jefferson County Board of Education and Jefferson County Teachers Association Participatory Management Program, a positive vote of at least 66 percent of the faculty is required. At the end of each year, teachers again vote on whether their school should remain in the program. A positive vote of at least

two-thirds is required for continuation.

One of the more unusual features of the agreement is its provision for deviations from the contract. Under the terms of the agreement, contract articles covering employee evaluation, employee discipline, personnel files, transfers, lay-off/recall, compensation, and the grievance procedure cannot be changed in any way. However, individual buildings participating in the pilot may deviate from other contract articles. If staff in a building find a particular provision a barrier to implementing a plan, they discuss the ramifications of deviation and try to identify alternative ways of solving the problem they wish to address.

If a deviation is required, a form requesting a deviation is completed and sent to the board of education employee relations office and the association office for review. These offices make sure the contract article and section noted are within the parameters for deviation set forth in the agreement and do not violate state and federal laws and regulations. If the deviation is within the parameters in the agreement and does not violate any laws or regulations, then the board and the association agree on the wording necessary for a vote to accomplish the specific agenda of the building. A secret ballot is then taken at a faculty meeting. If a majority of teachers in a building vote to deviate from the agreement, the deviation will then be accepted.

While provision for exception to the contract is part of the agreement governing participatory management, it is clear that getting such an exception is not to be taken lightly. The procedures are both complex and thorough. Deviations are granted only if they have been discussed by the school's faculty, if no alternative means can be identified to resolve an identified problem, if they occur within the parameters set forth in the agreement, if they do not conflict with state and federal laws and regulations, and if a majority of the faculty agree to the deviation. The local associa-

tion has a role both in reviewing the request and writing the wording of the item submitted for a vote. The process allows for some flexibility in the interests of the change process but contains some safeguards and restraints.

Although only a few years have passed since the ratification of the agreement, some impressive changes can be seen in some Jefferson County schools. In Wheeler Elementary, there is team teaching with multi-age student grouping (grades 1-3 and 4-5 are grouped together). The arrangement provides for more continuity among students and teachers than conventional arrangements. Lassiter Middle School also has team teaching and multi-age student grouping (grades 6-8 are grouped together). The school uses cooperative learning and peer teaching arrangements to encourage students to learn from and help one another. A no-fail policy encourages students to take responsibility for their own education, free from the stigma associated with failure. A middle-high program is designed to reduce and prevent dropouts. Governance has been altered as well. Leadership triads (composed of two teachers and an administrator) make policy and set standards for each grade level. Standing committees exist for participatory management, team communicators, staff development, and professional development.

A rash of contract deviations has not occurred, but the process outlined above has been used. In Fairdale High School, for example, teachers restructured the school day to create a daily teacher guidance-assisted (TGA) period (an effort to bring the notion of mentoring into a large, urban high school). During the period, students can be involved in a variety of activities from getting extra help from a teacher in a specific subject, doing extra lab work, using the library, spending more time on a computer, discussing a personal problem, or talking with the school counselor. Each student is assigned to a specific TGA class but

may request a pass to attend another teacher's class. All students and teachers participate. Consequently the program has a student-teacher ratio of about 15:1.

Most of Fairdale's teachers wanted the TGA period. The problem was that the contract was very specific about teaching load and duty hours as well as class size. Deviations were approved, increasing the maximum number of teaching periods from 25 to 30 per week to permit the introduction of an extra 25-minute period and reducing teachers' planning time from 50 minutes per day to 45 minutes per day. In return, teachers get an extra 45-minute planning period every other grading period. Although not a class in the formal sense of the term, the TGA required that the class size article be amended to permit teachers to meet with an extra class of students. Because the school day was not extended, the extra period meant that fewer minutes per day would be spent in actual instruction. This brought state regulations into play and required a waiver from the state as well as the approval of the board and the association before the program could be put into effect.

According to one of the JCTA members associated with Jefferson County's Gheens Professional Development Academy and closely involved with change efforts in a number of schools, it is the strength of the contract that has given JCTA members the confidence to experiment with new educational approaches (Dean Hight, personal communication, April 1990). While this is still a relatively young effort, participatory management seems to be working in Jefferson County. However, wide differences mark progress in individual schools. Much work remains to be done both by our Association and outside researchers to understand the precise differences among building cultures that contribute to this unevenness.

Greece, New York

In 1989 the Greece Central School District of Greece, New York, and the Greece Teachers Association crafted a change-oriented agreement. A joint standing committee known as the Council for Change, composed of the superintendent of schools, four members appointed by the superintendent, the president of the association, and four members appointed by the president, meet on a regular basis to consider and make recommendations with respect to proposed changes affecting the terms and conditions of employment of association members. The council may make use of jointly appointed study teams and jointly appointed resolution teams to research and develop options to respond to specific issues.

The intent of the contract provision concerning the council is to ensure that change be made by mutual agreement. In addition to the language governing the council's activities, the contract institutionalized and enhanced an already-existing site-based decisionmaking project by moving funding for short-term absences and release time, professional and staff development charges, and leadership stipends to the school level. Conventional issues are dealt with, too, some in new ways. A problem-solving procedure allows all problems, not simply contract violations, to be dealt with through mediation using in-district mediators. Problems that cannot be resolved by this process may be referred to a mediator from outside the district. If resolution cannot be achieved at this level and the issue is a contract violation, the problem may be submitted to grievance arbitration.

A section of the agreement called "Commitments for the Future" discusses such items as the creation of a multi-party task force to identify and develop standards to improve education; a direction statement for teacher evaluation; a peer

assistance program to help teachers in need; a mentor intern program; an I.D.E.A. (Innovations in the Development of Educational Achievement) Grants Program involving the board, district, and association in choosing recipients of awards; the creation of a districtwide school management committee in which all employee bargaining units participate; and a joint committee to review and clarify the role of teacher aides in the district.

In Greece, unlike Jefferson County, the collective bargaining agreement was drafted after the association was well into the change process. While this could become a source of problems for the reasons we have already discussed, in this case the association's participation in various school improvement activities strengthened its relationship with the district and allowed it to extend its role and responsibilities defined in the contract. In addition to activities specified in the contract, GTA and GTA members are involved in other activities such as a joint committee to review and recommend procedures to decentralize equipment budgets and facility improvement budgets; interviewing and hiring candidates for administrative positions; the establishment of a Greece Teacher Center to supplement existing staff development efforts; and the creation of a school of the future, an effort that will involve teachers, support staff, parents, business leaders, and elected leaders of the association (Richard Bennett and John Yagielski, letter to the author, January 1989). It is difficult to assess the degree to which individual contract provisions will be affected by the change process as it unfolds, but mechanisms exist to consider and resolve those issues.

The Greece story is interesting in another respect. The local president, who spearheaded many of the district's recent change efforts, was defeated in his bid for re-election. As far as can be determined, the vote was not reflective of the members' views of change as much as the local presi-

dent's failure to keep his membership informed about decisions that were being made and his reasons for making them. The Greece experience underscores the need for effective on-going communication and dialogue with constituents. The difficulty in making change does not end with the bargaining, but rather begins with it.

These are two of the better known but by no means the only examples of educational change that has been either initiated or regulated through the collective bargaining agreement. They have been provided only to show that collective bargaining is a flexible process capable of responding to a variety of needs and producing acceptable, workable processes and programs.

We need to educate our members and the general public about the capacity of collective bargaining to provide for the professional needs as well as the rights and protections of education employees. The most comprehensive and stable programs for educational change are governed by collective bargaining agreements. It is vital that we move out of this crippling dichotomy of labor relations and professional issues that has afflicted our Association and deformed public debate on educational change. Educational change is necessary; and collective bargaining provides a solid, credible platform from which to initiate and regulate the process.

Bibliography

- Alleyne, Reginald. 1976. Statutory Restraints on the Bargaining Obligation in Public Employment. In *Labor Relations Law in the Public Sector*, edited by Andrea S. Knapp, 100-114. Chicago: National Institute on Labor Relations Law in the Public Sector.
- Bacharach, Samuel B., and Joseph B. Shedd. 1989. Power and Empowerment: The Constraining Myths and Emerging Structures of Teacher Unionism in an Age of Reform. In *Politics of Education Association Yearbook*, edited by Robert Crowson and Jane Hannaway, 139-160. London: Taylor and Francis.
- Befort, Stephen F. 1985. Public Sector Bargaining: Fiscal Crisis and Unilateral Change. *Minnesota Law Review* 69:1221-1275.
- Brody, David. 1980. *Workers in Industrial America: Essays on the Twentieth Century Struggle*. New York: Oxford University Press.
- Chanin, Robert H. 1989. Is Collective Bargaining Compatible with Site-Based Decision-Making? Paper presented at NEA National Conference, Denver, Colo., April 8.
- Clark, R. Theodore, Jr. 1976. The Scope of the Duty to Bargain in Public Employment. In *Labor Relations Law in the Public Sector*, edited by Andrea S. Knapp, 81-98. Chicago: National Institute on Labor Relations Law in the Public Sector.
- Cohen-Rosenthal, Edward, and Cynthia Burton. 1987. *Mutual Gains: A Guide to Union-Management Cooperation*. New York: Praeger.
- Cresswell, Anthony M., and Fay Spargo. 1980. *Impacts of Collective Bargaining Policy in Elementary and Secondary Education: A Review of Research and Methodology*. Denver, Colorado: Education Commission of the States.
- Davis, Neal. 1989. Scope of Bargaining in Public Education: Toward a Comprehensive Balancing Test. *Journal of Urban and Contemporary Law* 36: 107-136.
- Eberts, Randall, and Joe A. Stone. 1984. *Unions and the Public Schools*. Lexington, Massachusetts: Lexington Books.
- Edwards, Harry T. 1973. The Emerging Duty to Bargain in the Public Sector. *The University of Michigan Law Review* 71:885-934.
- Finch, Michael, and Trevor W. Nagel. 1984. Collective Bargaining in the Public Schools: Reassessing Labor Policy in an Era of Reform. *Wisconsin Law Review* 1573-1670.
- Freidson, Eliot. 1986. *Professional Powers: A Study of the Institutionalization of Formal Knowledge*. Chicago: The University of Chicago Press.
- Hall, Richard. 1969. *Occupations and Social Structure*. Englewood Cliffs, N.J.: Prentice-Hall, Inc.
- Harp, Lonnie. 1991. States Slashing Reform Programs as Funding Basics Becomes Harder. *Education Week*, June 19, 1, 26.
- Harper, Michael C. 1982. Leveling the Road from Borg-Warner to First National Maintenance: The Scope of Mandatory Bargaining. *Virginia Law Review* 68 (Nov:1447).
- Harvard Law Review*. 1984. Collective Bargaining in the Public Sector. 97:1676-1712.
- Heckscher, Charles. 1988. *The New Unionism: Employee Involvement in the Changing Corporation*. New York: Basic Books.
- Hoerr, John. 1988. *And the Wolf Finally Came: The Decline of the American Steel Industry*. Pittsburgh: University of Pittsburgh Press.

Howe, Jonathan. 1988. Seeking Alternatives to Collective Bargaining. *Education Week*, October 27.

Kochan, Thomas. 1991. Blending Japanese and American Labor Relations: Four Successful Cases. In *Cooperation is Better: Case Studies on Labor-Management Relations in Japanese Affiliated Companies in the United States*, edited by the Industrial Union Department, AFL-CIO and the Japan Federation of Employers' Associations, 26-34. Tokyo: Japan Federation of Employers' Associations (NIKKEIREN).

_____, Harry C. Katz, and Nancy C. Mower. 1984. *Worker Participation and American Unions: Threat or Opportunity*. Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research.

Lambert, Samuel. 1969. Statement of Dr. Samuel Lambert. In *Labor-Management Policies for State and Local Government: A Commission Report*, Advisory Commission on Intergovernmental Relations, 135-139. Washington, D.C.: U.S. Government Printing Office.

Lee, Bruce. 1991. A Case Study of Labor-Management Relations: New United Motor Manufacturing, Inc. — A Joint Venture of General Motors and Toyota Manufacturing Corporation. In *Cooperation is Better: Case Studies on Labor-Management Relations in Japanese Affiliated Companies in the United States*, edited by the Industrial Union Department, AFL-CIO and the Japan Federation of Employers' Associations, 26-34. Tokyo: Japan Federation of Employers' Associations (NIKKEIREN).

Love, Thomas. 1968. *A Study of the Impact of Collective Negotiation by Teacher Participation in the Making and Review of School Policies*, ED 032 290.

McDonnell, Lorraine M., and Anthony Pascal. 1979. *Organized Teachers in American Schools*. Santa Monica: The Rand Corporation.

_____. 1988. *Teacher Unions and Educational Reform*. Santa Monica: The Rand Corporation.

NEA (National Education Association). 1963. *Guidelines for Professional Negotiation*. Washington, D.C.: National Education Association.

_____. 1971. *Negotiation for the Improvement of the Profession: A Handbook for Local Teachers Association Negotiators*. Washington, D.C.: National Education Association.

_____. 1986. State Bargaining Laws for Educational Employees: K-12 Teachers, Support Personnel, and Higher Education Faculty. *Collective Bargaining Quarterly* 9(June):1-96.

_____. 1988. *Employee Participation Programs: Considerations for the School Site*. Washington, D.C.: National Education Association.

_____. 1991. Site-Based Decision-making: The 1990 NEA Census of Local Associations. *Studies in Collective Bargaining*. Washington, D.C.: National Education Association.

New York State Teachers Association. 1971. Rationale for Negotiating an Instructional Policies Council, November. Albany, N.Y.: NEA - New York.

Ohlendorf, Karl H. 1969. *Negotiating for Instruction in Michigan*. In *Negotiating for Professionalization: Report of the Twentieth National TEPS Conference*. Washington, D.C.: National Education Association.

Perry, Charles R. 1979. Teacher Bargaining: The Experience in Nine Systems. *Industrial and Labor Relations Review* 33 (October): 3-17.

_____, and Wesley Wildman. 1970. *The Impact of Negotiations in Public Education: The Evidence from the Schools*. Worthington, Ohio: Charles A. Jones Publishing Co.

R & D Perspectives. 1981. Collective Bargaining: What Are Its Effects on Schools. (Fall):1-11.

R & D Perspectives. 1982. Conference Explores Effects of Collective Bargaining on Schools and Administrators. (Summer):1-7.

Rabban, David. 1990. Can American Labor Law Accommodate Collective Bargaining by Professional Employees? *The Yale Law Journal* 99:689-757.

Sackman, Murray L. 1977. Redefining the Scope of Bargaining in Public Employment. *Boston College Law Review* 19 (November):155-205.

State Policy Reports. 1991. State and Local Finance. *State Policy Reports* 9 (May): 17-22.

Stinnett, Timothy M., Jack H. Kleinman, and Martha L. Ware. 1966. *Professional Negotiation in Public Education*. New York: Macmillan.

Thompson, Charles L. 1971. Self-Examination, Self-Renewal, Self-Reliance, and the Spirit of Hillsdale. Paper presented at Seventeenth Annual Presidents' Seminar, Pacific Grove, Calif., August 27.

_____. 1989. Knowledge, Power, Professionalism, and Human Agency. In *Teachers and Research in Action*, edited by Carol Livingston and Shari Castle, 90-96. Washington, D.C.: National Education Association.

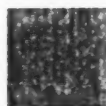
Wollett, Donald H. 1969. The Coming Revolution in Public School Management. *Michigan Law Review* 67 (March): 1017-1032.

_____. 1971. The Bargaining Process in the Public Sector: What Is Negotiable? *Oregon Law Review* 51: 178-182.

_____. 1978. Developments in Public Sector Collective Bargaining — An Ambivalent View. Paper presented at Pacific Coast Labor Law Conference, Seattle, Washington, May 12.

_____, and Robert H. Chanin. 1970. *The Law and Practice of Teacher Negotiations*. Washington, D.C.: The Bureau of National Affairs.

Yrchik, John, and Michael Kahn. 1989. The Rising Cost of Health Care Benefits: What Does It Mean and What Can We Do? *Collective Bargaining Quarterly* 11 (1988-89): 6-15.



nea

NATIONAL
EDUCATION
ASSOCIATION

1201 Sixteenth Street, N.W.
Washington, DC 20036-3290

